

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GEORGE RONDEAU,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-00-0048

)

) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

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I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on October 4 and 5, 2001.

1.2 **Appearances.** Appellant George Rondeau was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr & Younglove, P.L.L.C. Lawrence W. Paulsen, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for the causes of neglect of duty, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant established a personal relationship with an offender, provided her with gifts, kissed her and fondled her breasts.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. MOTION TO LIMIT EVIDENCE

On October 2, 2001, Appellant filed a Motion to Limit Evidence. At the outset of the hearing, Appellant presented oral argument to limit Respondent from presenting the following evidence:

1. An October 29, 1994 disciplinary letter and a related 1994 internal discrimination complaint of Mary Cook.
2. Any evidence regarding any polygraph examination report of Teresa Rutter, including specifically an April 4, 2000 report.
3. Any statements, oral or written, attributable to any persons not testifying under oath during the proceedings, including, specifically, the attachments to the dismissal letter, a November [September] 12, 2001 statement of Charity Hicks, and the testimony of Patricia DeShazer.
4. Any testimony of Charity Hicks, Roswetha Isham or Doug Waddington.

Appellant's Argument

1. Appellant argued that Respondent should not be allowed to introduce evidence related to the October 29, 1994 disciplinary letter because it was rescinded by the department, therefore the letter and documents related to the subsequent complaint should be excluded.

2. Appellant argued that the department would attempt to introduce an April 4, 2000 polygraph report concerning Teresa Rutter. Appellant argued that courts do not deem evidence relating to polygraphs admissible and that the PAB has only admitted polygraph results for the limited purpose of showing documents the appointing authority relied upon when deciding to take disciplinary action. Appellant asserted the dismissal letter did not reflect that the appointing authority's actions were based in any part upon Ms. Rutter's polygraph examination. Appellant asserted that Ms. Rutter, who was on escape status, would not be testifying but that Respondent intended to introduce evidence of her claims through previous statements given to the department and from the results of

1 the polygraph report. Appellant argued that because Ms. Rutter would not be testifying, the Board
2 could not evaluate her credibility and therefore, should not admit the polygraph report into
3 evidence.

4 3. Appellant objected to the introduction of any hearsay statements by individuals not available
5 to testify under oath and who could not be cross-examined by Appellant, including the testimony of
6 former inmate Patricia DeShazer. Appellant argued that such evidence would not be admissible
7 under the rules of evidence. Appellant argued that any decision regarding his career with the state
8 of Washington should be determined on credible evidence presented under oath and subjected to
9 cross-examination. Further, Appellant argued that the Board should have the opportunity to
10 evaluate the proponent's credibility. Therefore, Appellant argued that statements made by others
11 attributable to Teresa Rutter should be excluded.

12 4. Appellant asserted that Respondent identified inmate Charity Hicks as a potential witness.
13 Appellant argued that any testimony from Ms. Hicks purporting to be related to statements made by
14 Teresa Rutter should be excluded as hearsay and because Ms. Hicks' testimony was not properly
15 disclosed during discovery. Appellant further argued that on September 28, 2001, Appellant's
16 counsel received an Amended Witness List adding the names of Roswetha Isham and Doug
17 Waddington as witnesses for Respondent. Appellant argued that their testimony should also be
18 excluded because their names were not provided during discovery.

19 **Respondent's argument**

20 Respondent argued that Appellant's Motion was untimely and not filed pursuant to WAC
21 358-30-042. Respondent argued, therefore, that Appellant's written motion should be stricken.

22 1. Respondent argued that evidence regarding the October 29, 1994 discipline of Appellant
23 should be admitted as evidence of Appellant's untruthfulness under oath. Respondent argued that
24 when asked in Interrogatories and Requests for Production whether he had ever been accused of
25 workplace sexual harassment, and when asked the same question during his deposition, Appellant
26 falsely answered "no." Respondent argued that Appellant knowingly falsely answered the

1 interrogatories sent to him; falsely affirmed the interrogatory answer under oath at his deposition;
2 and then compounded those falsehoods by untruthfully testifying that he did not understand that the
3 1994 disciplinary action was about sexual harassment. Respondent argued that because witness
4 credibility is an essential issue in this case, this evidence should be admitted as relevant to the issue
5 of Appellant's willingness to testify truthfully.

6 2. Respondent argued that the affirmative results of Inmate Rutter's polygraph should be
7 admitted because this Board has the authority to do so and because the appointing authority
8 considered the polygraph results when making a determination as to Inmate Rutter's credibility.
9 Respondent argued that the appointing authority would testify that the results of Ms. Rutter's
10 polygraph exam, and her willingness to testify, were just some of the many factors he considered in
11 determining that she was truthful and that Appellant was lying. Respondent argued that it's clearly
12 within this Board's discretion to determine the admissibility of polygraph evidence and that this
13 Board has previously admitted polygraph evidence for limited purposes.

14 3. Respondent argued hearsay testimony is admissible in PAB hearings pursuant to
15 legislative directive. Respondent admitted that Ms. Rutter would not testify because her
16 whereabouts were unknown. However, Respondent argued that it planned to introduce evidence of
17 her previous statements through individuals to whom she made those statements. Respondent
18 argued that Appellant has had and will have the opportunity to question those witnesses and that
19 testimony offered on Ms. Rutter's behalf by other witnesses will be consistent with a signed, written
20 statement that she provided to the department during the course of the investigation.

21 4. Respondent argued that testimony from Charity Hicks, Roswetha Isham, and Doug
22 Waddington was timely disclosed and should be admitted. Respondent asserted that it did not
23 disclose Hicks, Waddington and Isham at the time Appellant's interrogatories were answered
24 because Respondent was not aware that these witnesses had knowledge relevant to this case until
25 recent weeks. Respondent argued, however, that this information was made known to Appellant in
26 a timely manner. Respondent argued that the only new witness offered who would have otherwise

1 been disclosable under Appellant's interrogatory was Ms. Isham, and that she was disclosed one
2 week before the hearing. Respondent argued that Isham's testimony would be short in duration and
3 very limited in scope and that there was no prejudice to Appellant in having Ms. Isham testify.
4 Furthermore, Respondent argued that Appellant had a full week to contact Ms. Isham, discuss her
5 testimony and prepare to rebut that testimony.

6 5. Respondent argued that Charity Hicks' testimony should be admissible as after-acquired
7 evidence that would, by itself, justify dismissal of Appellant. Respondent argued that it discovered
8 evidence that Appellant gave Ms. Hicks gifts, information that was not known at the time the June
9 2000 disciplinary action was taken. Respondent argued that this evidence was sufficient by itself to
10 justify Respondent's dismissal of Appellant. Respondent argued that this Board should follow the
11 lead of the U.S. Supreme Court and the Washington appellate courts, which have found that after-
12 acquired evidence is admissible if evidence surfaces to justify the action taken. Respondent argues
13 it should be allowed to present evidence of Ms. Hicks' allegations as further justification for its
14 decision to dismiss Appellant from his employment.

15 16 **Board Ruling**

17 The Board granted Appellant's motion to exclude any evidence regarding the October 29,
18 1994 disciplinary letter and allegations related thereto and to exclude the polygraph examination
19 results of Teresa Rutter because she was not available to testify. The Board ruled, however, that the
20 appointing authority could testify regarding the polygraph results and the weight he gave the results
21 when assessing the level of discipline imposed against Appellant. The Board also granted
22 Appellant's motion to exclude any evidence from Charity Hicks which was acquired after
23 Appellant's dismissal letter was issued and which was not known to the appointing authority at the
24 time he made his decision to dismiss Appellant. The Board denied Appellant's motion to prevent
25 Respondent from presenting testimony from Patricia DeShazer, Roswetha Isham and Doug
26 Waddington.

III. MOTION TO SET ASIDE DISCIPLINE

3.1 At the conclusion of Respondent's case, Appellant moved to set aside the discipline arguing that Respondent failed to prove by a preponderance of the evidence the allegations set forth in the disciplinary letter. Appellant argued that Respondent failed to present testimony from any individual who claimed to have personal knowledge of the allegations and that Respondent's case was based solely on Ms. Rutter's statements and other witness hearsay testimony as to what Ms. Rutter told them. Appellant argued that Ms. Rutter provided inconsistent statements throughout the course of the investigation and that other offenders provided statements that indicate Ms. Rutter changed her stories. Appellant argued that Respondent provided no reliable evidence to establish that he engaged in any improper conduct.

3.2 Respondent acknowledged no one saw Appellant kiss or fondle Ms. Rutter and that much of its case is built on hearsay. However, Respondent asserted that it presented corroborating testimony through other witnesses to support Ms. Rutter's statements. Respondent argued that it provided credible testimony from Officers Dawn McGinnis and Roswetha Isham that Appellant was seen with Ms. Rutter behind closed doors and that Ms. Rutter's written statements explain what happened behind those closed doors. Respondent also argued that Officer McGinnis witnessed Appellant and Ms. Rutter engaged in a close conversation and that although she could not hear what was said, she observed their body language and demeanor. Respondent argued that Officer McGinnis provided credible testimony that Ms. Rutter later explained that Appellant wanted to know what Ms. Rutter was saying about him and warned her that if he went down, she was going down with him. Respondent further argued that Appellant failed to provide a credible motive for why Ms. Rutter would lie. Respondent argued that there was enough evidence for a reasonable person to conclude that Appellant engaged in the alleged misconduct.

1 3.4 The Board considered the evidence and testimony presented and orally denied Appellant's
2 motion. In making its determination, the Board weighed the testimony of the witnesses and the
3 evidence presented by Respondent. The Board found that Respondent presented sufficient credible
4 evidence to establish a *prima facie* case.

6 **IV. FINDINGS OF FACT**

7 4.1 Appellant George Rondeau was a Correctional Sergeant and permanent employee for
8 Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06
9 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a
10 timely appeal with the Personnel Appeals Board on June 29, 2000.

11
12 4.2 Appellant became employed with the Department of Corrections in July 1986. Appellant
13 had no history of corrective or disciplinary actions. Appellant's employment history indicates that
14 he was an above-average employee and was routinely evaluated as exceeding normal requirements.
15 Appellant worked at the Tacoma Pre-Release facility which housed both male and female offenders.

16
17 4.3 On February 23, 2000, Lt. Alan Kunz received information that offender Teresa Rutter was
18 stating that she was receiving cigarettes and coffee from Appellant in return for sexual favors. Ms.
19 Rutter, who was admitted into the Tacoma Pre-Release on January 26, 2000, was an inmate porter
20 from approximately January 28, 2000 to February 24, 2000. Ms. Rutter performed cleaning duties
21 in the administrative hall where Appellant's office [the Sergeant's office] was located. Ms. Rutter
22 emptied garbage cans daily, a task that took approximately two to three minutes. Once a week the
23 Sergeant's Office was cleaned, which took approximately 15 minutes. Inmates were not allowed
24 access into the Sergeant's office without the supervision of correctional staff.

1 4.4 On February 24, Lt. Kunz approached Appellant and informed him that Ms. Rutter was no
2 longer to work as a porter and that she was not allowed to enter the administrative hall area. Later
3 that day, Bill Kitchen, Ms. Rutter's Community Corrections Officer, approached Appellant and
4 asked him to convey information to Ms. Rutter about her release date. Because Ms. Rutter was not
5 allowed to enter the administrative hall, Appellant and Ms. Rutter entered a visiting room.
6 Corrections Officer Dawn McGinnis, who was working at Major Control, could view both
7 Appellant and Ms. Rutter engaged in conversation. Ms. McGinnis described Appellant as having a
8 stern and angry look while whispering into Ms. Rutter's ear. Ms. Rutter appeared "scared," shaking
9 her head no, and made no eye contact with Appellant. The conversation lasted approximately three
10 to five minutes. Ms. Rutter later told Ms. McGinnis that Appellant called her into the visiting room
11 to tell her that he was concerned because there was an investigation going on about him and that he
12 wanted to know if she had said anything, what she planned on saying, and that he warned her that
13 "if I'm going down, you are too."

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15 4.5 On February 24, Steven Baxter, an internal investigator from the Washington Corrections
16 Center for Women, interviewed Ms. Rutter. Ms. Rutter denied that she was receiving any items
17 from Appellant.

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19 4.6 Inmate Julie Speyer was interviewed on February 25. Ms. Speyer, who was a porter in the
20 Fall of 1999, alleged that Appellant made inappropriate comments to her such as asking that she
21 clean his house in the nude; stated his wife could not have sex; and told her that he could make her
22 time "really easy or really hard." Ms. Speyer alleged that Appellant offered to provide her with
23 cigarettes.

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25 4.7 On February 25, Appellant was interviewed, and he denied that he engaged in any
26 inappropriate behavior with Ms. Rutter or that he provided her with contraband.

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2 4.8 On February 25, based on a confidential tip, the institution conducted a search of inmate
3 Patricia DeShazer's room. During the search, an officer found contraband in the form of two boxes
4 of Camel cigarettes. Ms. DeShazer alleged that the cigarettes belonged to Ms. Rutter and that Ms.
5 Rutter had received them from a visitor.

6
7 4.9 On February 29, Ms. Rutter was again questioned. At this time, Ms. Rutter alleged that
8 Appellant had provided her with cigarettes on several occasions and that he discussed personal
9 details of his life with her. Ms. Rutter alleged that Appellant touched her breasts and kissed her
10 twice on the mouth.

11
12 4.10 Ms. Rutter was released from the Tacoma-Pre-Release on March 2, 2000.

13
14 4.11 By memo dated March 3, 2000 to Superintendent Earl Wright, Mr. Baxter issued a report in
15 which he concluded that further investigation into the allegations was warranted based on the
16 information provided by Inmates Rutter and Speyer.

17
18 4.12 On March 3, Lt. Kunz initiated an Employee Conduct Report against Appellant specifically
19 alleging that on or about January 28, 2000 to February 25, 2000, Appellant engaged in sexual
20 contact with offender Teresa Rutter, provided her with gifts in the form of cigarettes and coffee in
21 exchange for favors, and that he fondled her breasts.

22
23 4.13 Further interviews with Ms. Rutter and other inmates were conducted. During an interview
24 on March 14, 2000, Ms. Rutter admitted that her father had provided her with Camel filter
25 cigarettes during a visit. Mr. Kunz issued his findings and conclusion by memo dated March 17,
26 2000 to Mr. Wright. Mr. Kunz concluded as follows:

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3 Statements uphold that the cigarettes Rutter possessed were obtained through
4 offender visiting, brought in by her father and husband.

5 The allegations of sexual misconduct could be attributed to diversion and
6 retaliation on Rutter's part, in an attempt to remain undetected in the introduction
7 of contraband from her visitors; and to obtain popularity amongst offenders.

8 Rondeau's statements are misleading, raising question regarding his
9 communication skills with offender. This could be attributed to the stress of
10 allegations or his type of supervisory skills, which will need to be addressed.

11 4.14 Mr. Wright, Appellant's appointing authority, reviewed the results of the investigative
12 reports. On March 28, Mr. Wright met with Appellant to discuss the allegations and to allow
13 Appellant an opportunity to present any additional information relevant to the charges. During the
14 meeting, Appellant admitted to Mr. Wright that he had exchanged information of a personal nature
15 with Ms. Rutter, but he asserted that he offered information "to get information." Appellant also
16 told Mr. Wright that he "had a rapport with inmates." Mr. Wright testified that the practice of
17 giving information to get information from inmates was inappropriate and not sanctioned by the
18 institution. Mr. Wright felt that Appellant's remarks during the meeting were evasive, and he
19 believed that Appellant failed to provide him with any information to support his denials.

20 4.15 In making a determination of misconduct, Mr. Wright also compared the allegations made
21 by Ms. Rutter against Appellant's denials. Mr. Wright weighed that Appellant was the supervisor
22 of the unit and in charge on Saturdays, a day when the administrative area was vacant. Therefore,
23 Mr. Wright believed that the isolation of the area created opportunity for Appellant to engage in the
24 type of behavior described by Ms. Rutter. Mr. Wright also evaluated the results of polygraph
25 examinations Ms. Rutter took, which he believed made Ms. Rutter more credible because she was
26 willing to undergo a polygraph examination. Mr. Wright felt that the results of the examination

1 affirmed her contention that Appellant fondled her breasts, even though the results were
2 inconclusive as to whether Appellant kissed her on the lips.

3
4 4.16 Mr. Wright ultimately concluded that Appellant engaged in sexual misconduct with an
5 inmate and provided her with contraband. Mr. Wright concluded that termination was the
6 appropriate sanction. By letter dated June 27, 2000, Mr. Wright informed Appellant that he was
7 suspended without pay from June 28, 2000 followed by his immediate dismissal effective July 13,
8 2000. Mr. Wright cited the causes for Appellant's dismissal as neglect of duty, gross misconduct
9 and willful violation of agency policy. Mr. Wright specifically alleged that between January 28,
10 2000 and February 25, 2000, Appellant established a personal relationship with inmate Teresa
11 Rutter, provided her with gifts, kissed her, and fondled her breasts while working his shift at the
12 Tacoma Pre-Release.

13
14 4.17 The Board has been presented with no direct testimony from Ms. Rutter or other witnesses
15 to support the allegations that Appellant provided Ms. Rutter with gifts or that he kissed or fondled
16 her breasts. In making a determination of the facts, we must resolve whether Ms. Rutter was telling
17 the truth regarding these specific allegations based on her written statements alone. Without the
18 opportunity to evaluate Ms. Rutter's testimony and make a determination as to her credibility, we
19 do not find that a preponderance of the evidence supports that Appellant kissed or fondled Ms.
20 Rutter or that he provided her with cigarettes. Furthermore, there was a plausible motive for Ms.
21 Rutter to fabricate these allegations and to exaggerate the extent of her relationship with Appellant:
22 to protect her father and husband from getting in trouble for bringing cigarettes into the institution.
23 However, there was credible testimony from Appellant's coworkers that corroborate that Appellant
24 did in fact spend considerable time with Ms. Rutter in his office.

1 4.18 Bill Kitchen was Ms. Rutter's Community Corrections Officer. Mr. Kitchen's office was
2 located next to the Sergeant's Office. Mr. Kitchen observed Ms. Rutter and Appellant on numerous
3 occasions visiting in the Sergeant's Office. It appeared to Mr. Kitchen that Ms. Rutter spent more
4 time in Appellant's office than the "average offender." Credible testimony from Officer Dawn
5 McGinnis further supports that Ms. Rutter spent time with Appellant in the Sergeant's office and
6 that at times they were behind closed doors. Credible testimony from Correctional Officer
7 Roswetha Isham also corroborates that Ms. Rutter and Appellant were in the Sergeant's office with
8 the door closed.

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10 4.19 Appellant admits that he called Ms. Rutter into his office and "counseled" her on at least one
11 occasion when she appeared distraught. Appellant testified that he provided "misinformation to get
12 information" to Ms. Rutter in an attempt to put her at ease, to "relate" to her and to get information
13 in return. Appellant admits, however, that he was not responsible for conducting any investigations
14 for which he had to elicit information from Ms Rutter. Appellant told Ms. Rutter that his ex-wife
15 once had a drug problem, spent a year in prison, but eventually recovered from her drug use by
16 participating in substance abuse courses and that she subsequently became a "model citizen."
17 Appellant testified that he provided this information to Ms. Rutter to allay concerns she had about
18 "going back to the drug world" once she was released. Appellant told Ms. Rutter that his son had a
19 truck. Appellant further testified that information about his son's truck was "misinformation"
20 because his son was too young to drive.

21
22 4.20 Appellant denies that he was ever in the Sergeant's office with Ms. Rutter or that they were
23 behind closed doors. We do not find his testimony on this point credible. We find no compelling
24 reason to disbelieve the statements of Mr. Kitchen, Ms. Isham and Ms. McGinnis that Appellant
25 and Ms. Rutter were alone in the Sergeant's office, at times with the door closed.

1 4.21 Respondent has adopted Policy No. 801.005 that addresses employee relationships with
2 offenders. The policy requires that employees have a professional relationship with offenders,
3 directs employees to treat offenders with dignity and respect and prohibits personal and/or
4 unofficial relationships with offenders. Appellant acknowledged that he was familiar with this
5 policy.

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7 4.22 We find that more likely than not, Appellant's communications with Ms. Rutter went
8 beyond casual and professional contact and included personal and unofficial conversations with an
9 inmate under DOC supervision.

10 11 **V. ARGUMENTS OF THE PARTIES**

12 5.1 Respondent argues that a preponderance of the evidence establishes that Appellant
13 inappropriately touched, kissed and provided contraband to Ms. Rutter. Respondent argues that
14 Appellant was evasive during the interview process, and that when asked pointed questions,
15 Appellant would ask for definitions rather than providing direct and honest answers.

16 Respondent contends that Ms. Rutter did not have a motive to fabricate her story and that
17 there was no credible motive put out as to why she would lie. Respondent asserts that Ms. Rutter
18 did not come forward willingly and that she did not reveal any information until the department
19 approached her. Respondent argues that Ms. DeShazer and Ms. McGinnis corroborated
20 circumstantial evidence provided by Ms. Rutter. Furthermore, Respondent argues that both Ms.
21 Rutter and Ms. Speyer provided consistent stories regarding Appellant's attempts to groom them for
22 sexual favors.

23 Respondent argues that as a Correctional Sergeant, Appellant had tremendous power over
24 female offenders and that the type of behavior he engaged in is not compatible with working in a
25 custodial capacity. Respondent argues that the department was justified in finding misconduct and
26 in protecting itself and offenders by terminating Appellant's employment.

1 5.2 Appellant denies that he engaged in a personal relationship with inmate Teresa Rutter, and
2 he denies that he kissed her, fondled her breasts or that he provided her with gifts. Appellant asserts
3 that Ms. Rutter initially denied allegations that she and Appellant engaged in inappropriate sexual
4 conduct. Appellant asserts Ms. Rutter subsequently fabricated the lies because of the search which
5 uncovered cigarettes in Ms. DeShazer's room and because her father and husband were providing
6 her with the contraband.
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8 Appellant asserts that he was honest during the investigations and he admits that he
9 disclosed some personal information to Ms. Rutter; however, he contends that he was "giving
10 misinformation to receive information." Appellant asserts that Ms. Rutter is a convicted criminal
11 and that her crimes involve forgery, theft and fraud and therefore, she lacks credibility. Appellant
12 asserts that he was an exemplary employee for 14 years and was professional and ethical.
13 Appellant asserts that Respondent failed to meet its burden and that his appeal should be granted.
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15

16 VI. CONCLUSIONS OF LAW

17 6.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
18 herein.
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20 6.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
21 the charges upon which the action was initiated by proving by a preponderance of the credible
22 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
23 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
24 Corrections, PAB No. D82-084 (1983).
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1 6.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
2 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
3 of Social & Health Services, PAB No. D86-119 (1987).

4
5 6.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
6 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

7
8 6.5 Willful violation of published employing agency or institution or Personnel Resources
9 Board rules or regulations is established by facts showing the existence and publication of the rules
10 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
11 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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13
14 6.6 Respondent has failed to prove by a preponderance of the credible evidence that Appellant
15 provided Ms. Rutter with gifts or that he fondled her breasts and kissed her. However, Respondent
16 has proven, by a preponderance of the evidence, that Appellant established a personal relationship
17 with Ms. Rutter, during which they spoke in his office and discussed information of a personal
18 nature. We further conclude that it is irrelevant that some of the information Appellant shared with
19 Ms. Rutter was "misinformation." Appellant's misconduct constitutes neglect of his duty to follow
20 prudent correctional practices. Furthermore, Appellant's actions violated Respondent's Policy
21 801.005 which required him to manage his interactions with offenders in a professional manner, to
22 refrain from engaging in personal relationships with offenders and to be mindful of the appearance
23 of improper association with offenders. However, Respondent has failed to prove that Appellant's
24 misconduct rises to the level of gross misconduct.

1 6.7 In determining whether a sanction imposed is appropriate, consideration must be given to
2 the facts and circumstances, including the seriousness and circumstances of the offenses. The
3 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
4 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
5 program. An action does not necessarily fail if one cause is not sustained unless the entire action
6 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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8 6.8 In assessing the discipline imposed, we note that as a Correctional Sergeant, Appellant held
9 a position of responsibility, authority and power over female offenders. Appellant clearly
10 understood that engaging in personal relationships with offenders was prohibited. Furthermore, he
11 had a responsibility to act as a role model to subordinate officers. In his role as a Sergeant,
12 Appellant must be held to a higher standard of conduct and accountability. Nonetheless, under the
13 circumstances presented here, we conclude that Appellant's dismissal is too severe. Three factors
14 mitigate the discipline of dismissal: 1) Respondent's failure to prove the most serious of the
15 charges, 2) Appellant's positive work history, and 3) Appellant had no prior corrective action
16 (either formal or informal).

17
18 6.9 These mitigating factors notwithstanding, the seriousness of a long-time custodial officer
19 engaging in a personal relationship with an offender warrants a severe disciplinary sanction.
20 Therefore, we conclude that a demotion to a position as a Correctional Officer 2, where Appellant
21 will be under closer supervision, is sufficient to prevent recurrence, to deter others from similar
22 misconduct and to maintain the integrity of Respondent's program. Therefore, the disciplinary
23 sanction of dismissal should be modified, and Appellant is demoted to a position as a Correctional
24 Officer 2.

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VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of George Rondeau is granted in part and his dismissal is modified to a demotion to a position as a Correctional Officer 2.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair

Leana D. Lamb, Member